THE STATE OF NEW HAMPSHIRE

THE ATTORNEY GENERAL
STATE HOUSE ANNEX, ROOM 208
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301

December 16, 1977

Benjamin C. Adams, Commissioner
Department of Employment Security
32 South Main Street
Concord, New Hampshire 03301

Dear Commissioner:

By memorandum dated November 10, 1977, you request our opinion on the following two legal questions of law.

1. Does the Department of Employment Security have the authority, under Footnote 37 of House Bill 1000 which became effective on October 26, 1977, to enter into an agreement with the Secretary of Labor for the United States to carry out the provisions of Chapter 2 of Title II of the Trade Act of 1974?

2. If the Department has such authority, can any such agreement relate back to July 1, 1977?

In our opinion, the answer to each question is yes.

Under Section 239 of the Trade Act of 1974 which amended the Federal Unemployment Tax Act, 26 U.S.C. §3301 et seq. (PL 93-618, 88 Stat. 1978), the State of New Hampshire is obliged to bind itself contractually to the United States to administer the Worker Adjustment Assistant Program. Failure to undertake the requisite

contractual obligation for any portion of calendar years 1977 or 1978 can, under Section 3302(c)(4) of the Internal Revenue Code of 1954, result in the loss by New Hampshire employers of a tax credit which would mean that such employers would have to pay a substantial increase in federal taxes for the tax years 1977 and 1978.

The Department of Employment Security was empowered to enter into the requisite contract -- with an effective date of April 3, 1975 -- up until July 1, 1977. 1977 Laws 600:37, a so-called budget footnote, was apparently intended to extend the authority of the Department of Employment Security for another year. That footnote contains two relevant clauses. The first empowers the Department of Employment Security to execute the requisite contract, effective April 3, 1975. The second clause repeals the first. Over the past few years it has been the practice of the Legislature to follow this basic format in authorizing the Department of Employment Security to execute Trade Act agreements. See Chapter 34, Laws of 1976; Chapter 486, Laws of 1975. In the past the first clause, the "empowering" clause, has been effective on the date of enactment and the second clause, the "repealer" clause, has become effective approximately one year after enactment.

In the 1977 Session, however, through some apparent oversight, the effective dates for both the empowering clause and the repealer clause were set by 1977 Laws 600:113, another footnote, for the same date, the date of enactment. In effect, the Legislature purported to grant authority to contract to the Department of Employment Security and purported to repeal it in the same instant.

A substantial body of law in this State establishes the following principles: that the Legislature may not be presumed to have intended to do an idle or meaningless act, see Kalloch v. Board of Trustees of the New Hampshire Retirement System, 116 N.H. 443, 362 A.2d 201 (1976); State v. Woodman, 323 A.2d 921, 114 N.H. 497 (1974), and that a statute duly adopted by the Legislature should not be construed as leading to an absurd result, State v. Kay, 115 N.H. 696, 350 A.2d 336 (1975); Welch v. Read, 100 N.H. 174, 121 A.2d 569 (1956); Trustees of Phillips Exeter Academy v. Exeter, 92 N.H. 473, 33 A.2d 665 (1943). Under circumstances similar to those here the New Hampshire Supreme Court rejected a litigant's contention with respect to the proper construction of a special act of the Legislature, stating: "A short answer to this contention is that its acceptance would require a conclusion that the Legislature intended to accomplish

nothing by its adoption of this act. . . . The court will not assume that the Legislature acted without reason or purpose in adopting the special act." Welch v. Read, supra, at 175-76, 121 A.2d 570 (1956). Moreover it is a fundamental and long-standing principle of statutory construction that one portion of a statute should not be construed to annul or destroy what has been clearly granted by another. See Peck v. Jenners, 48 U.S. (7 How.) 612 (1849).

Based on these legal principles and the past practice of the Legislature in extending to the Department of Employment Security the authority to enter into the requisite agreement for a period of one year at a time, it is our opinion that Section 37 read in conjunction with Section 113 of the same act must be construed as granting the Department of Employment Security the authority to enter into the required Trade Act agreement with respect to the period ending June 30, 1978.

Based on the fact that Section 37 specifically provides that any such agreement will have an effective date of April 3, 1975, it is our opinion that the Legislature, although enacting Chapter 600 on October 26, 1977, intended to grant the Department of Employment Security the authority to enter into an agreement relating back in time to April 3, 1975, so that there would be no lapse in the State's undertaking of its obligations under the Trade Act of 1974 in the period following June 30, 1977.

Yours sincerely,

David H. Souter
Attorney General

James C. Sargent, Jr.
Assistant Attorney General

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